IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7583 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT MAZDOOR SABHA - Petitioner(s)

Versus

INDIAN OIL CORPORATION LTD & 3 - Respondent(s)

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Appearance :

MR MUKUL SINHA for Petitioner No(s).: 1.

MR MANISH R BHATT for Respondent No(s).: 1.
NOTICE SERVED BY DS for Respondent No(s).: 2.
GOVERNMENT PLEADER for Respondent No(s).: 3.
MR SAMIR J DAVE for Respondent No(s).: 4.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 19/07/2005

C.A.V.

Rule. Shri M.R. Bhatt, learned advocate waives service of Rule on behalf of respondent No.1. Though served, nobody appears on behalf of respondent No.2. Shri Samir Dave, learned Additional Central

Government Standing Counsel appears for respondents No. 3 and 4.

2. In this petition under Article 226 of the Constitution of India the petitioner Gujarat Mazdoor Sabha (hereinafter referred to as “Union”) has prayed for an appropriate writ, order or direction directing the respondent No.3 Conciliation Officer to complete the conciliation proceedings within the period of one month and submit his report to the appropriate authority and the respondent No.4 appropriate authority may be directed to take the decision with respect to making the Reference to the Industrial Tribunal of the demands raised by the Union which is at Annexure “I” to the petition pending in Conciliation Case No. BRS/ALC/8(33)/05 within the period of 15 days thereafter. Another prayer is for a declaration that decision to terminate the concerned workmen of the demands at Annexure 'I” to the petition and pending conciliation proceedings is unjust and improper and in violation of the provisions of The Industrial Disputes Act, 1947 (“the I.D. Act” for short) and specifically in violation of the different provisions of the ID Act like Section 9A and Section 44 of the I.D. Act. By way of interim relief the petitioner Union has prayed for restraining the respondents No. 1 and 2 from removing the concerned workmen from service or discontinuing their services with IOCL, Gandhar, LPG Bottling Plant, i.e., respondent No.1 or in any manner altering the service conditions of the concerned

workmen and the demands to their prejudice and also to maintain status-quo.

3. It is the case of the petitioner union that the 12 concerned workmen have joined the services of IOC Ltd, Gandhar, LPG Bottling Plant and that they have been engaged in regular and perennial and permanent work with respondent No.1, IOC Ltd. It is their case that they are in continuous employment with IOCL, despite the fact that the contractors through whom they are paid are changed from time to time. It is also the case that the present contract with respondent No.2 herein M/s. Dak & Company has come into existence with effect from 15th April 2002 and their contract period is to expire. It is the case of the petitioner union that they have issued a Strike-cum-Demand Notice dated 24th March 2005 to the IOCL and they have demanded regularisation, permanency and absorption of all the concerned workmen from the respective date of their joining the services. It is also demanded that the so-called arrangement of contract labour system should be declared and treated as sham, bogus and paper arrangement which has been created to exploit this workmen. It is also demanded that the said workmen's employment should be continued even if the contractor is changed. It is the case of the petitioner that the union had also approached the Assistant Commissioner of Labour (Central) who is the Conciliation Officer, vide their letter dated 24th March 2005 and he had issued a conciliation notice

also fixing the date of conciliation proceeding on 7th April 2005. It is the case of petitioner union that as they have served a strike/demand notice to IOCL the respondent No.1 IOCL has taken a decision that the services of the respondent workmen will not be continued after 30th April 2005, i.e., on the date the contract between the respondent No.1 IOCL and respondent No.2 contractor expires and therefore the petitioner has preferred the present Special Civil Application for the aforesaid reliefs.

4. Shri Mukul Sinha, learned advocate appearing on behalf of the petitioner union has relied upon various orders passed by this Court by which while disposing of the petition filed by the union wherein the prayer was with regard to abolition of the contract system and to treat the workmen as employees of the principal employer and while relegating the union to invoke the machinery under the I.D. Act this Court has directed the principal employer to continue the workman and if in the meantime the contract between the principal employer and the contractor comes to an end a direction was issued that it will be open for the principal employer to award fresh contract by inserting a clause that the new contractor will continue the present workmen till a decision is taken by the appropriate authority whether to make a Reference or not and to maintain status-quo till 2 weeks from the date of intimation given to the union for making Reference. Shri Sinha has further submitted that once if this Court does

not protect the service conditions of the concerned workmen in that case the workmen would be without job and they will have to wait for a long period till the final decision of the Reference and therefore it is requested to protect the services of the concerned workmen till an appropriate decision is taken by the appropriate authority whether to make a Reference or not and for a further period of 2 weeks thereafter. Shri Sinha has relied upon the orders passed by this Court in Special Civil Applications No. 7520 of 1997, Special Civil Application No. 4580/1999, Special Civil Application No. 8420/2003, and Order passed in Letters Patent Appeal No. 447/2001 in Special Civil Application No. 10673 of 2000. Relying upon Section 33 of the ID Act Shri Sinha has requested to grant order of status-quo with regard to service conditions of the concerned workmen. He has submitted that there is a right in favour of the concerned workmen but no remedy is available to them and therefore it is requested to direct the respondents No. 1 and 2 to continue the concerned workmen till an appropriate decision is taken by the appropriate authority with regard to making a Reference after the Failure Report by the Conciliation Officer and for a period of 2 weeks thereafter.

5. Per Contra, Shri M.R. Bhatt, learned advocate appearing on behalf of respondent No.1 has strongly opposed the present Special Civil Application. He has submitted that Civil Application

No. 4221 of 2005 filed in the present Special Civil Application be treated as their affidavit-in-reply for which Shri Sinha, learned advocate appearing on behalf of original-petitioner has no objection. It is submitted that the contract between the petitioner and respondent No.2 had already come to an end, however the same has been extended during pendency of the present Special Civil Application in view of ad-interim relief granted by this Court, which is now extended upto 31st July 2005. He has further submitted that the contractor who is awarded with the contract has a requisite licence under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, and the contract not having been prohibited there is no employer-employee relationship between the concerned workmen and the contract labour and as such it is not open for the union to raise any demand for permanent absorption with IOC. It is further submitted that the concerned workmen are the employees of the contractor and assuming without admitting that it is open for the petitioner union to raise the demand but even considering the demand and the main relief is to declare that the contract entered into between the respondent No.1 and the contractor is sham and bogus and that the concerned workmen are the employees of the respondent No.1 unless and until there is a final adjudication by the competent industrial forum it cannot be said that the concerned employees are the workmen of respondent No.1 IOC Ltd., and under the circumstances there is no question of granting

any relief directing the respondent No.1 IOC not to discontinue their services as according to the respondent No.1, workmen are not employees of the respondent No.1 and there is no adjudication to that effect till date. Relying upon the Judgment of the Hon'ble Supreme Court in the case of Delhi Cloth & General Mills Vs. Additional Industrial Tribunal (Sri Rameshwar Dayal) & Another, reported in 1960 II-LLJ Page 712 and the Judgment of the Hon'ble Supreme Court in the case of M/s. Anup Engineering Ltd. Vs. Shreenarayan Kanaiyalal, reported in 1995(1) G.L.H. 345, it is submitted that interim relief cannot be granted by deciding the main issue at interlocutory stage. It is submitted that even when the Reference is made in that case also considering the aforesaid two judgments of the Hon'ble Supreme Court even during pendency of the Reference also no interim relief is required to be granted and in that case there is no question of granting any interim relief during pendency of the conciliation proceedings. Therefore it is requested to dismiss the present Special Civil Application. Shri Bhatt has also relied upon the Judgment of the learned Single Judge of this Court in the case of Gujarat Mazdoor Panchayat Vs. Conciliation Officer and Ors., reported in 2002(2) G.L.H. 253 in support of his submission that in view of the fact that the contract between the respondent No.1 and respondent No.2 is to now expire on 31st July 2005 if the interim order is passed directing the respondent No.1 to continue the concerned workmen and/or directing the new contractor

to continue the respondent workmen then in that case the said relief would be without hearing the new contractor who is not a party before this Court in the present proceedings. Under the circumstances it is submitted that even no direction be issued directing the respondent No.1 to insert a condition by adding a clause in the contract directing the new contractor to continue the respondent workmen and therefore it is requested to dismiss the present Special Civil Application. Shri Bhatt has also relied upon the decision of the Division Bench of this Court in the case of V.K. Mansuri Vs. O.N.G.C. Ltd., reported in 2002(1) GLH Page 443 wherein the Division Bench of this Court has held that when a petition filed under Article 226 of the Constitution is dismissed the interim orders passed in such petition should not be continued. Therefore, it is requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It is to be noted that the main relief, which is sought in the present Special Civil Application is for a direction on the respondent No.3 Conciliation Officer to complete the conciliation proceedings within the stipulated time and to submit his report to the respondent No.4 appropriate authority and directing the appropriate authority to take a decision of making a Reference to the Industrial Tribunal. Another prayer is for a declaration that the decision to terminate the concerned workmen pending in conciliation proceedings

is illegal and in violation of the provisions of the I.D. Act. It is also required to be noted that the demand raised by the petitioner union is with regard to regularisation, permanency and absorption and to treat the contract labour system and the contract between the respondent No.1 IOCL and the contractor as sham and bogus, and for a declaration that the concerned workmen are the employees of the respondent No.1 IOCL and for which the union has already approached the Conciliation Officer. It is the case of the learned Additional Central Government Standing Counsel that the conciliation proceedings are not concluded as there is total non-cooperation on the part of the union as well as the respondent No.1. Assuming that the Reference is made to the Industrial Tribunal, in that case the main relief would be whether the contract labour system and the contract between the respondent No.1 IOCL and the contractor is sham and bogus or not and that whether the concerned workmen are the employees of the respondent No.1 IOCL or not and that will be the final relief which may be granted by the Industrial Tribunal on adjudication. Till final adjudication if any relief is granted by the Industrial Tribunal it cannot be said at this stage that the concerned workmen are the employees of the respondent No.1 IOCL and that the Contract Labour System and the contract between the respondent No.1 IOCL and its contractor is sham and bogus. To grant any relief directing the respondent No.1 and/or the contractor and/or the new contractor would be granting final relief at this stage and that

too without any final adjudication by the appropriate Industrial Tribunal. Even in a proceeding under Sections 33 and 33A of the I.D. Act, the Hon'ble Supreme Court in the case of Delhi Cloth & General Mills [supra] has held that the interim relief should not be the whole relief what the workmen could get if they succeed finally and hence pending an application under Section 33-A of the Act, the employer could not be directed to give work or to pay the wages by way of interim relief. In another decision in the case of M/s. Anup Engineering Ltd [supra], where the dismissal was without holding domestic enquiry and industrial dispute which was raised was referred to the Labour Court, the Supreme Court has set aside the interim order passed by the Labour Court by which the workman was to be paid the wages, by observing that the interim relief cannot be granted by deciding main issue at interlocutory stage. Now, considering the facts of the present case, it is required to be noted that the proceedings are pending at conciliation stage and even there is no Reference made till date. Therefore, when in a Reference no interim relief can be granted, and if granted it would be allowing and/or granting the main relief, there is no question of granting any relief during pendency of the conciliation proceedings. As stated hereinabove, till date there is no relationship of employer and employee established between the concerned workmen and the respondent No.1 and there is no adjudication on the question whether the concerned workmen are the employees of respondent No.1 or not and/or whether

the contract is sham or bogus. Under the circumstances, considering the aforesaid two decisions of the Hon'ble Supreme Court and even catena of decisions of the Hon'ble Supreme Court as well as of this Court the proposition is very well established that a Court should not grant any interim relief which can be the main relief after adjudication. Under the circumstances, the prayer of the petitioner (of course orally when in absence of any relief sought for by the petitioner specifically in the present Special Civil Application for directing the respondent No.1 and/or the contractor to not to discontinue them during the pendency of the conciliation proceedings) cannot be granted. So far as the orders, which are relied upon by the learned advocate appearing on behalf of the petitioner are concerned, apart from the fact that they are not laying down any law and/or not discussing about any law as most of the order are on consensus between the parties, the same cannot be relied upon. On going through the orders which are relied upon by the learned advocate on behalf of the petitioner, it is evident that there is no discussion in the aforesaid orders about the law laid down by the Hon'ble Supreme Court in the aforesaid two decisions and other decisions with regard to grant of interim relief during pendency of the proceedings which will tantamount to grant of main relief, and the same has not been considered at all and therefore all the aforesaid orders are *per incurium.*

7. There is another reason also why the prayer of the petitioner to direct the respondent No.1 and/or contract not to discontinue their services should not be granted. It is not in dispute that as on today the concerned workmen are paid the wages through the Contractor only and at present the respondent No.2 is the contractor and his contract is to expire now on 31st July 2005 and thereafter there will be a new contractor. Nobody knows who will be the new contractor and to direct the respondent No.1 to insert a clause and add one another condition in the new contract directing such unknown new contractor to continue the present workmen would be directing such new contractor to have the liability of the present workmen when such new contractor is not a party to the present proceedings. Therefore, in absence of a new contractor and/or a proposed contractor, no relief can be granted by which the new contractor will be compelled to accept the liability of the present concerned workmen. Under the circumstances, the request made on behalf of the petitioner directing the respondent No.1 not to discontinue the workmen and/or in case of a new contractor directing such new contractor to continue the workmen cannot be granted. The learned Single Judge of this Court, in the case of Gujarat Mazdoor Panchayat {supra}, has also taken the similar view. The Division Bench of this Court, in the case of V.K. Mansuri [supra], has dismissed the Letters Patent Appeal filed by the union against the decision rendered in the Special Civil Application concerned which came to

be dismissed wherein the prayer sought was to grant permanency pending the petition and to treat the workmen as employees of ONGC Ltd and to declare the contract as sham and bogus, and when such Letters Patent Appeal was dismissed, a request was made to continue the interim relief, but the said prayer was not accepted by this Court relying upon judgment of the Hon'ble Supreme Court in the case of *Shivshankar Vs. Board of Directors, UP State Road Transport Corporation (1995) Supp. 2 SCC 726,* in which the Hon'ble Supreme Court has laid down that the Court should not pass any interim orders or should not continue interim relief after dismissal of the writ petition. The Division Bench, therefore, did not grant any interim relief directing the ONGC Ltd not to discontinue their services.

8. Considering the overall facts and circumstances and the proposition laid down by the Hon'ble Supreme Court as well as by this Court in the aforesaid decisions and considering the fact that it is yet to be established on final adjudication whether the contract labour system and the contract entered into between the respondent No.1 IOCL and its contractor are sham and bogus and that whether the concerned workmen are the employees of the respondent No.1 or not, and considering the fact that granting of any interim relief at this stage, and/or any relief directing the respondents No. 1 and 2 and/or a new contractor to not to discontinue the services of the concerned workmen would be amounting to granting

of main relief itself without any final adjudication, such prayer cannot be granted till final disposal of the Reference and on adjudication by this Court. Hence, the present Special Civil Application being devoid of merits, is required to be dismissed.

9. For the foregoing reasons, the present Special Civil Application is dismissed. The ad-interim relief granted earlier stands vacated forthwith.

10. In view of dismissal of the present petition, there shall be no orders on the Civil Application No. 4221 of 2005 and the same stands disposed of accordingly.

{ M.R. Shah, J. }

RMR.